

DOCUMENT RESUME

ED 258 354

EA 017 852

AUTHOR Ericsson, Samuel E.; And Others
TITLE Religious Released Time Education: The Overlooked Open Door in Public Schools.
INSTITUTION Christian Legal Society, Springfield, VA. Center for Law and Religious Freedom.
PUB DATE 82
NOTE 35p.
AVAILABLE FROM Publication Sales, Christial Legal Society, P.O. Box 1492, Springfield, VA 22151 (\$5.00).
PUB TYPE Guides - Non-Classroom Use (055) -- Viewpoints (120)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Compliance (Legal); Constitutional Law; Elementary Secondary Education; Guidelines; Program Administration; *Released Time; *Religion; *Religious Education; Religious Organizations; School Schedules; *State Church Separation; Student Rights; Time Blocks

ABSTRACT

This paper presents arguments in favor of, and legal and constitutional guidelines for, religious released time education programs as a workable counterbalance for those concerned with the trend toward secularism in public education. The guidelines are necessarily general, because laws regarding the authority of school districts to adopt released time programs and the legality of such programs vary from state to state. Using a question-and-answer format, the paper addresses the following issues: (1) arguments for and against the adoption by school districts of a released time program; (2) the authority of local school districts to choose whether to adopt a released time program; (3) who may operate a released time program, and who may participate; (4) basic guidelines for financing and administering released time programs; (5) limits on the amount of time available for religious instruction, and states' power to cut out released time programs by reducing the required minimum number of hours in a school day; (6) informing parents about released time programs and obtaining their consent; (7) division of responsibility for management of such programs between religious organizations and public schools; (8) procedural guidelines for releasing students from public school classes for religious instruction; (9) activities for students not involved in such programs; (10) custodial, elective, eligibility, and state funding credit for released time; (11) public school supervision over content and teaching of released time courses; (12) legal and illegal religious studies in public schools; and (13) crucial distinctions in two contrasting Supreme Court decisions regarding released time. (TE)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED 258354

RELIGIOUS RELEASED TIME EDUCATION:
THE OVERLOOKED OPEN DOOR IN PUBLIC SCHOOLS

by

Center for Law and Religious Freedom
of the Christian Legal Society

Samuel E. Ericsson
Kimberlee Colby
Robert Payne

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

[] This document has been reproduced as
received from the person or organization
originating it.

X Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official N.E.
position or policy.

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

*Samuel E.
Ericsson*

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

Christial Legal Society
P.O. Box 2069
Oak Park, IL 60303
(312) 848-7735

P.O. Box 1492
Springfield, VA 22151
(703) 941-3192

\$5.00

c CLS 1982
All rights reserved. No portion of this paper may be reproduced
without prior permission.

EA 017 852

RELIGIOUS RELEASED TIME EDUCATION:
THE OVERLOOKED OPEN DOOR IN PUBLIC SCHOOLS

INTRODUCTION

A quiet, but steady revolution has taken place in the American public school system during the past three decades. The Judeo-Christian world view has been replaced in large part by one that is markedly secular.

In response to this shift, many parents have chosen alternative ways to educate their children. The most common option has been to turn to parochial and church schools.

Yet, for many other parents this option is not available to them in their community. Countless others simply cannot afford the financial burden of private schools.

The vast majority of parents believe strongly in the public school approach and find it to be the best alternative for their children. But they wish that there could be some effective way to counteract the trend towards secularism. Religious released time education can provide this balance. It is an opportunity overlooked by most parents, clergymen and educators. It is our hope that the following material will serve as a catalyst and tool for those who choose to work within the public education arena.

Religious released time is the most effective open door by which students may receive religious instruction during their school day. Released time is the only means by which religious instruction which is intended to convert students or instruct

them in a particular set of religious beliefs is allowed during the school day. All other religious instruction during the school day must be objective, intended only to inform students of different religious ideas and not to persuade them of the truth of any particular ideas.

A released time program may not always be constitutional. It must therefore be carefully crafted in order to pass applicable constitutional tests. The information in this paper should be considered simply as general guidelines to help you and your counsel in establishing a local program. We will use a question and answer format.

The answers are not exhaustive, because laws regarding the authority of school districts to adopt released time programs and the legality of such programs vary from state to state. Before attempting to set up a local released time program, it is recommended that the organizers review state constitutional provisions, laws, and regulations which might bear on establishing a released time program in their community.

Also, the answers are not exhaustive, because court decisions in one state, while influential, are not binding on the courts of other states. Therefore, when an answer relies on a court decision other than a United States Supreme Court decision, be aware that the answer is merely an indication of how one court has viewed a particular aspect of a released time program. A court in your state might conclude differently.

Only two United States Supreme Court cases have dealt specifically with religious released time programs. Before the 1948

Supreme Court decision of Illinois ex rel. McCollum v. Board of Education¹ no released time program had been held unconstitutional by state or federal courts. In McCollum, however, the Court held that a released time program, in which religious representatives came into public classrooms for less than one hour per week to give religious instruction, was a violation of the First Amendment requirement that the government establish no official religion. Many persons reading McCollum thought that any released time program might therefore be held unconstitutional.

However, four years later, in Zorach v. Clauson,² the Supreme Court upheld a released time program. The controlling facts were that the program in Zorach was conducted off the school campus for one hour per week and no public funds were used to finance it.

Many lower courts, when considering the constitutionality of a released time program, specifically compare it to the Zorach released time program.³ Therefore, the most certain guarantee of a released time program being upheld is to model it as closely as possible to the Zorach plan. However, this may not always be possible nor did Zorach address certain issues, such as whether credit may be given for released time programs, which may be important.

¹Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948).

²Zorach v. Clauson, 343 U.S. 306 (1952).

³Smith v. Smith, 523 F.2d 121 (4th Cir. 1975), cert. denied, 423 U.S. 1073 (1976); Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678 (Wis. 1975); Perry v. School District No. 81, 344 P.2d 1036 (Wash. 1959). Also, in Lewis v. Spaulding, 193 Misc. 66, 85 N.Y.S.2d 682, 688-89 (Sup. Ct. 1948), there is a good comparison of the McCollum and Zorach plans and their differences. (See Question 24.)

Despite being thirty years old, Zorach is still a valid decision. The Supreme Court and lower federal courts still cite it approvingly.⁴ In one recent case, a federal district court had held a released time program similar to one in Zorach unconstitutional, arguing that Zorach was no longer considered good law by the Supreme Court. The federal circuit court reversed that ruling, saying that Zorach has not been abandoned. The Supreme Court refused to review the circuit court's decision, implying that it was correct.⁵

In the 1970's the Supreme Court developed a three-prong test for determining whether a state program involving religion violates the Establishment Clause of the First Amendment. The three prongs are: 1) does the program have a secular purpose; 2) does it have a primary effect of advancing or inhibiting religion; and 3) does it create an excessive entanglement of the state with religion. The courts which have applied this test to released time programs have found that, with minor exceptions, the programs meet the test.⁶

⁴Meek v. Pittinger, 421 U.S. 349, 359 (1975); Smith, supra note 3; Holt, supra note 3, at 683.

⁵Smith v. Smith, 391 F. Supp. 443, rev'd, 523 F.2d 121 (4th Cir. 1975), cert. denied, 423 U.S. 1073 (1976).

⁶Lanner v. Wimmer, 662 F.2d 1349, 1358 (10th Cir. 1981) (released time program aspects that involve excessive entanglement are invalid); Smith, supra note 3, at 125 (primary effect of released time program is not to advance religion); Holt, supra note 3, at 684-86 (released time program meets all three prongs of test).

QUESTION 1: What are some of the arguments favoring the adoption of a released time program by a school district?

The following reasons have been used in support of adopting programs:

1. A released time program, if properly established and administered, is constitutional.⁷ In holding certain released time programs constitutional, the Supreme Court said that a released time program in which students were allowed to leave the schoolgrounds for religious instruction was the same in principle, as allowing individual students to miss school, with their parents' permission, in order to attend a family baptism or observe religious holidays.⁸

2. A released time program respects the religious nature of the American people and accommodates the public service to those needs.⁹ It is an opportunity for students to receive religious instruction that is otherwise forbidden in the public classroom under Supreme Court decisions.

3. A released time program provides a means by which students can be exposed to teaching that helps build and strengthen good morals and healthy values. This is especially important when much of the peer pressure and entertainment media create undesirable moral influences on students. Since students are often exposed to general permissiveness, drugs, opportunities to cheat or steal, and other bad influences, on the school campus itself, it would seem that a school district should welcome an opportunity

⁷Zorach v. Clauson, 343 U.S. 306 (1952).

⁸Id. at 313.

⁹Id. at 314.

allowing students to voluntarily expose themselves to positive and healthy influences based on religious values and traditions. To some degree, this will also relieve the school of some of the controversy inherent in the current approach to teaching values in public schools.

4. A released time program could also be designed to provide instruction in religious literature, history and themes that are necessary in order to more fully appreciate important works of art, music, and literature and, therefore, necessary to a complete education.¹⁰ Although such instruction can be given in public schools if taught objectively without any attempt to influence the beliefs of the students,¹¹ a released time program relieves the school of the expense of the course and of being in the controversial and difficult position of supervising the content and instruction of such a course.

5. A released time program does not involve any expense to the school district or state.

6. During its sessions, a released time program may substantially reduce the number of students in a class, enabling the teacher to give additional attention and help to the remaining students.

7. A released time program recognizes and reinforces the constitutionally protected right of parents to direct the religious upbringing of their children.¹²

¹⁰School District of Abington v. Schempp, 374 U.S. 203, 225 (1963).

¹¹Id.; Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979); Vaughn v. Reed, 313 F. Supp. 431 (W.D. Va. 1970).

¹²Yoder v. Wisconsin, 406 U.S. 205 (1972); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Lanner v. Wimmer, 662 F.2d 1349, 1358 (10th Cir. 1981); Smith v. Smith, 523 F.2d 121, 125 (4th Cir. 1975) cert. denied, 423 U.S. 1073 (1976).

8. A released time program provides a child and his parents the opportunity for religious instruction that might otherwise be unavailable. For example, at the present time, more than fifty percent of mothers with school-age children work outside of the home. Work schedules often prevent these parents from taking their children to religious instruction after school. Thus, a released time program offers a very practical alternative for them to provide their children with weekday religious instruction.

9. A child is required by law to spend a substantial part of his day in the public classroom, thereby greatly reducing the time available for him to participate in weekday religious instruction before or after school. A released time program would restore some of that time to the child if his parent wishes to make use of it. It recognizes that a child's spiritual needs should be met throughout the week and not only on weekends.

10. A released time program for religious instruction is not completely unique in education, since schools often have released time programs for students to work at jobs off schoolgrounds or to take advanced courses at a local college. In each case, the students are permitted to leave schoolgrounds during school hours in order to be given instruction which the school is not able to provide on campus.

QUESTION 2: What are some of the arguments against the adoption of a released time program by a school district?

In determining the constitutionality of a released time program, a court is not to consider the wisdom of the system, its

efficiency from an educational point of view, or the political considerations behind its adoption.¹³ However, a school district will often consider these factors in determining whether to adopt a program. Some of the reasons used in opposing local programs include:

1. The school becomes a crutch on which local churches lean in attempting to provide religious training to children in their community.

2. Since students are compelled by compulsory education laws to attend school, churches are using the state to furnish students for their religious program in violation of the principle of separation of church and state. Response: This argument was in effect rejected by the Court in Zorach v. Clauson which stressed the principle of accommodation.

3. School children will feel pressured to attend released time programs, even if they or their parents do not agree with the religious views of the groups sponsoring such programs. Response: Although some peer pressure might be felt by the students to participate, participation is completely voluntary on the part of students and parents. Also, in contrast to religious instruction in the classroom, the students who participate in the program are the ones required to leave the classroom. Finally, school administrators and teachers are not permitted to encourage or discourage students from participating in a given program.¹⁴

¹³Zorach v. Clauson, 343 U.S. 306 (1952); Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678, 687 (Wis. 1975).

¹⁴Zorach v. Clauson, 343 U.S. 306 (1952). Also Perry v. School District No. 81, 344 P.2d 1036, 1043 (Wash. 1959).

4. The education of the children who do not participate in a released time program is hurt because normal class activity will be disrupted while some students attend the programs.¹⁵

Response: The answer to this objection depends in part on the number of students who leave the class to participate in released time. Where the number is small, normal class activity may continue uninterrupted. If a significant number of students are missing, normal classroom activity may in fact be interrupted. However, this time can be used for special projects or extra help on a more individualized basis for those students remaining in the classroom. Therefore, properly structured, a released time program need not unduly disrupt the educational function of the class. Accommodation is practical and possible.

5. The primary objective of the public schools is to educate its students in academic subjects such as reading, writing, and arithmetic, not to accommodate religious instruction. This objective will be disrupted if parents choose to have their children spend time in released time classes. Response: First, parents have the primary responsibility to determine the nature of the education of their children. Additionally, parents should therefore have the option permitting their children to receive religious training as part of their children's general education. Moreover, instruction in religious literature, history and other religious themes has been recognized as a proper subject for public schools,

¹⁵Id. at 311.

if taught objectively without any attempt to indoctrinate the students. If a school chooses not to provide these types of classes, the parents should have the right to a viable alternative.¹⁶

6. If it adopts a released time program, the school district may run the risk of litigation. Response: A released time program may be designed and administered to meet all legal and constitutional considerations, thereby diminishing the likelihood of litigation. In any event, the fear of litigation should not have a chilling effect on whether parents and students should be permitted to exercise options the law provides for them.

QUESTION 3: Can parents or religious groups legally require a school board to adopt a released time program?

Generally no. Although released time programs may be constitutional, it is not a constitutional right of parents, religious groups or students to have such programs.¹⁷ Thus, a state or school district cannot be compelled legally to adopt a policy allowing students to be excused for off-campus religious instruction during school hours.

The courts are generally reluctant to interfere in the daily operation of a school and usually defer to the discretion of school boards in establishing educational policies.¹⁸ As a practical matter, this means that parents and churches must cooperate with school authorities in establishing and operating a released

¹⁶School District of Abington v. Schempp, 374 U.S. 203, 225 (1963).

¹⁷Zorach v. Clauson, 343 U.S. 306 (1952).

¹⁸Epperson v. Arkansas, 393 U.S. 97, 104 (1968).

time program. The first step should be to clearly establish the authority of the school district allowing students to attend off-campus religious activities during school hours. (See Question 4). Parents and religious groups must often educate school officials as to the legality of such a program, pointing to existing state laws authorizing school boards to excuse students for released time programs. They must also educate the officials as to the desirability of such a program. (See Question 1).

A noteworthy exception to the rule that a school board may not be compelled to adopt a released time program has been recognized in Oregon in one case. Oregon enacted a statute specifically authorizing the school district to excuse students, upon parents' request, to attend off-campus weekday religious instruction. Yet a court interpreted that statute as requiring school boards to release students.¹⁹ Other state courts may or may not adopt this interpretation of similar statutes.

In sum, released time is an opportunity for providing religious instruction to public school students. However, it is an opportunity that must be requested rather than demanded.

QUESTION 4: What authority must a local school district have in order to adopt a released time program?

There are several ways school districts are given authority to adopt a released time program. First, some states, such as Wisconsin, have state constitutions which explicitly authorize

¹⁹Dilger v. School District 24 CJ, 222 Or. 108; 352 P.2d 564 (Or. 1960).

releasing students from public schools for religious instruction.²⁰ It should be noted, however, that some state constitution "establishment clauses" may be used to bar certain aspects of local programs in a given state.²¹

Second, some states expressly authorize by statute school districts to adopt released time programs.²² Even under these statutes, the local school district has considerable discretion in establishing the specific framework of any given program.

Third, where no specific statute existed, a court in Washington allowed a school district to adopt a released time program under the compulsory education laws of the state.²³ These types of laws often provide local school boards the authority to regulate the day-to-day operation of the schools and to establish the programs and curriculum that will best serve the needs of the community. Parents and religious groups should consider seeking passage of state constitutional provisions, statutes, or regulations specifically permitting released time programs, if the state does not have adequate provisions.

²⁰ Holt v. Thompson, 66 Wis. 2d 659, 255 N.W.2d 678, 688 (Wis. 1975) (Wisconsin constitution amended to allow legislature to authorize released time programs).

²¹ Perry v. School District No. 81, 344 P.2d 1036, 1043 (Wash. 1959) (violations of state constitution by certain aspects of released time program). The Supreme Court in Zorach v. Clauson, 343 U.S. 306 (1952), discussed only whether released time programs violated the federal constitution.

²² Cal. Education Code §46014 (West); N.Y. Education Law §3210 (McKinney).

²³ Perry v. School District No. 81, 344 P.2d 1036, 1043 (Wash. 1959) (local superintendent had statutory authority to excuse students for "any other sufficient reason"); Dilger v. School District 24 CJ, 222 Or. 108, 352 P.2d 564 (Or. 1960) (note that this statute was challenged as being too vague) (concurring opinion) (school district could release students upon parental request without any legislation and purely by the exercise of administrative power).

QUESTION 5: Who may operate a released time program?

Each community will have its own unique ethnic, cultural, and religious character to consider in establishing its program. An effective program should seek to accommodate the religious needs of the students in the community and can "make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary."²⁴

The religious groups in the community must initiate the released time programs. Neither the local school nor the state can take any action that would "coerce anyone to attend church, to observe a religious holiday, or to take religious instruction."²⁵

It is common for various religious groups, sects and denominations to form a common council.²⁶ These councils provide both the structure and the administration for the program. Each group, sect or denomination retains control over the location, materials, and religious content of its own program.

A religious group may choose to offer released time activities even though it does not participate in a common council.²⁷ and

²⁴ Zorach v. Clauston, 343 U.S. 306, 313 (1952).

²⁵ Id. at 314.

²⁶ Smith v. Smith, 523 F.2d 121 (4th Cir. 1975), cert. denied, 423 U.S. 1073 (1976); Perry v. School District No. 81, 344 P.2d 1036 (Wash. 1959).

²⁷ Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

where no council exists, individual churches or denominations may also arrange with school authorities for a program only involving their group.²⁸

Regardless of how a program is structured, the school district must not show partiality for any particular church, sect or denomination.²⁹

QUESTION 6: What are the basic guidelines for financing and administering released time programs?

The public schools can neither finance religious released time programs nor become excessively involved in administering sectarian activities.³⁰ Both the secular and sectarian administrators who establish and operate released time programs should keep two basic principles in mind.

First, "no tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."³¹ Consequently, the religious groups or the parents must bear the costs of the program. Some minor, incidental but necessary administrative costs, such as those incurred filing attendance reports, have been considered to be too insignificant to violate the general rule.³²

²⁹ Walz v. Tax Commission, 397 U.S. 664 (1970); Epperson v. Arkansas, 393 U.S. 97 (1968); Zorach v. Clauson, 343 U.S. 306, 314 (1952).

³⁰ Zorach v. Clauson, 343 U.S. 306, 308, 314 (1952); Lanner v. Wimmer, 662 F.2d 1349, 1358 (10th Cir. 1981).

³¹ Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 210 (1948).

³² Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678, 683 (Wis. 1975).

Second, a released time program should seek the alternative that will minimize the state's entanglement in administration.³³

QUESTION 7: Are there limits on the amount of time which students may be released for religious instruction?

To some extent, yes. Before a program administrator begins discussions with public school authorities about when and for how long the school will release program participants, the administrator should consult the applicable statutes and regulations to determine what limitations may exist. Usually the time permitted for religious released time ranges from one to three hours per week.³⁴ The release of students for one hour per day has been allowed.³⁵ However, at some point, the amount of released time could become so great as to constitute the abdication of education to sectarian groups and not the mere accommodation of the religious needs of the students.³⁶

If state authorities have not mandated the time limits, local school boards may regulate the time standards to best meet the needs of the school's regular schedule. In some states where the legislature has set a maximum time limit on released time activity,

³³ Lanner v. Wimmer, 662 F.2d at 1358.

³⁴ Zorach v. Clauson, 343 U.S. 306 (1952) (one hour per week); Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678 (Wis. 1975) (at least one hour but no more than three hours per week); Dilger v. School District 24 CJ, 222 OR 108, 352 P.2d 564 (Or. 1960) (no more than two hours per week).

³⁵ Lanner v. Wimmer, 662 F.2d 1349 (10th Cir. 1981)

³⁶ Id. at 1359.

the school board, upon a parent's request, must allow release for the full amount of time but can designate the time when the child will be released.³⁷

In order to avoid any significant disruption of the school's schedule and to minimize administrative involvement, the local school usually designates the period of the day during which the participating groups may receive students for religious activities.³⁸ As a practical matter, if more than one religious group sponsors a released time program, then all groups must meet at the same time. In at least one program, the students themselves designated which class period they wanted to participate in religious instruction.³⁹

QUESTION 8: May the state lower the required minimum number of hours in the school day with the practical effect of cutting released time programs?

Yes. Since the state is not required to allow a released time program, it can set the minimum number of hours in the student's school day, which could have the effect of making a released time program impractical for school districts to implement. An exception to this may exist where the state has a statute authorizing released time activity which specifically requires or has been interpreted to require that school districts release students for religious instruction upon their parents' request. (See Question 3).

³⁷ Dilger v. School District, 352 P.2d 564, 568 (Or. 1960).

³⁸ Zorach v. Clauson, 343 U.S. 306, 308 (1952); Lanner v. Wimmer, 662 F.2d 1349, 1359 (10th Cir. 1981) (time set by school officials for junior high students); Holt v. Thompson, 66 Wis. 659, 225 N.W. 2d 678, 683 (Wis. 1975).

³⁹ Lanner v. Wimmer, 662 F.2d 1349 (10th Cir. 1981) (high school students selected the hour to take released time classes).

Also, a primary argument for a released time program is that, since compulsory education absorbs so much of the child's day, the school district should release him for a part of that time to receive religious instruction that he would otherwise have to forego. This argument becomes less convincing where the school day is shortened, since arguably children would then have more time outside of school hours to attend religious instruction in their home or church.

Thus, as a practical matter, those directing the local program must strive to cooperate with school officials as much as possible and work to make the program a truly positive addition to the district's educational program. Then, if reduction in the minimum-hours requirement occurs, school administrators may be more reluctant to trim back the released time program.

QUESTION 9: What students may participate in a released time program?

School districts can institute religious released time programs for any grade level.⁴⁰ All released time programs have required students to have parental permission to participate in religious released time programs.

QUESTION 10: How should parental consent be obtained?

Program administrators should choose the method for

⁴⁰ Lanner v. Wimmer, 662 F.2d 1349 (10th Cir. 1981) (junior and senior high level); Smith v. Smith, 523 F.2d 121 (4th Cir. 1975), cert. denied, 423 U.S. 1073 (1976) (elementary level); Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959) (elementary level).

obtaining parental consent that will require the least amount of school involvement.⁴¹ For this reason, the religious groups which sponsor released time programs should take primary responsibility for distributing consent forms to parents. In one case where a group wished to open its program to persons not members of its denomination, it obtained a student enrollment list from the public school and then mailed the consent cards to parents.⁴² If the group does not wish to offer the program to all students, it can distribute cards to a select group.

Released time groups should prepare the consent cards and then mail them directly to the parents. Thereby, the groups steer clear of the prohibitions against state financing or becoming excessively entangled in administering programs. If the public school wants program participants to use a uniform consent form, the school should prepare an example which the religious organization can produce and distribute. The practice of having public school teachers or religious group representatives distribute consent cards or explain the program in public classes has been disallowed in at least one instance.⁴³

⁴¹ Lanner v. Wimmer, 662 F.2d 1349, 1358 (10th Cir. 1981).

⁴² Smith v. Smith, 523 F.2d 121, 122 (4th Cir. 1975), cert. denied 423 U.S. 1073 (1976).

⁴³ Perry v. School District No. 81, 344 P.2d 1036, 1037-38 (Wash. 1959) (distribution of cards in schools or the making of announcements or explanations for the purpose of obtaining the parents' consent by representatives of religious groups or instructors in the schools violated state constitution).

After the parents have completed the consent forms, the school must verify that each child has received parental permission to participate in the program. The religious group may collect the forms and forward them to the public school officials.⁴⁴ Also, the children may return the forms to the school which then gives the cards to the religious groups in the program who then inform the school officials which students are to be released.⁴⁵

QUESTION 11: What information should parents receive about a released time program?

The administrators of the religious released time program should inform parents about the purpose and format of the proposed religious activities. Parents should be told how the program can enrich their children's education. This is especially true when a released time program is a new concept in a community. An information sheet should accompany the consent forms sent to the parents. The making of announcements or explanations in the classroom or on the school premises for the purpose of obtaining the parents' consent by representatives of religious groups or public school teachers has been disallowed.⁴⁶ (See Question 10).

The information sheet should include a description of the religious organizations who are participating in the program and

⁴⁴ Lanner v. Wimmer, 662 F.2d 1349, 1354 (10th Cir. 1981).

⁴⁵ Smith v. Smith, 523 F.2d 121, 122 (4th Cir. 1975).

⁴⁶ Perry v. School District No. 81, 344 P.2d 1036, 1043 (Wash. (1959)).

how each organization wishes to conduct its religious activities. The parents should be advised where the activities will take place and how students will get to that location. The parents will also need to know how this program may affect their child's standing in the public school; for example, whether the child will be able to make up missed work. Besides informing the parents about the mechanics of the specific program, it is also helpful to include some general background information covering the history of released time.

QUESTION 12: Where may released time classes be conducted?

The United States Supreme Court has ruled that released time classes may not be held on public school grounds.⁴⁷ As long as classes are not conducted on public school property, though, released time instruction may be provided in any other wise lawful location. For example, lower courts have allowed released time programs in which classes were held in churches or trailers located near, but not on, school grounds,⁴⁸ in a seminary which was architecturally similar to the school located on a lot adjacent to the school,⁴⁹ and at religious centers off schoolgrounds.⁵⁰

⁴⁷ Compare Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 209 (1948) (released time program in which religious teachers entered public school classrooms held unconstitutional); with Zorach v. Clauson, 343 U.S. 306, 308 (1952) (released time program held constitutional because, among other reasons, classes were not held on public school grounds).

⁴⁸ Smith v. Smith, 523 F.2d 121 (4th Cir. 1975), cert. denied, 423 U.S. 1073 (1976).

⁴⁹ Lanner v. Wimmer, 662 F.2d 1349, 1354 (10th Cir. 1981).

⁵⁰ Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678, 682 (Wis. 1975).

QUESTION 13: In what manner should students be released from their public school classes to attend released time classes?

Public school officials should excuse students for religious instruction in the same manner that they release students for other purposes, as the situation permits. Moreover, school officials should attempt to excuse students for released time in a manner that stigmatizes neither the students excused nor those remaining. Thus, public school teachers and administrators may not comment on the released time program or on the students who choose to attend or not to attend.⁵¹

In one situation, a federal court allowed a public school to release students for religious instruction in the following manner. The public address system and bell system of a seminary in which released time classes took place was connected to the public address and bell systems used by a public school. Bells were rung to denote the beginning and ending of class, and public school announcements could be heard in the seminary, but could not be made from there. The United States Court of Appeals for the Tenth Circuit held this manner of releasing students permissible because the seminary paid for the installation of communications connections between the school and the seminary and because the interconnected system helped avoid unnecessary conflicts between seminary classes and public school classes and activities.⁵²

⁵¹Zorach v. Clauson, 343 U.S. 306, 311 (1952).

⁵²Lanner v. Wimmer, 662 F.2d 1349, 1359 (10th Cir. 1981). The Tenth Circuit is the only court to have ruled on the permissibility of a manner of release so closely interconnecting a public with a sectarian school. Whether other courts will choose to follow the Tenth Circuit's holding is open to question.

QUESTION 14: How should students be transported from public school premises to released time classes?

According to the Supreme Court, the Constitution prohibits public schools from providing students with transportation to religious released time activities. The Supreme Court has explained that the constitutional principle of accommodating the religious needs of the people by cooperating with religion in released time programs does not justify significant financial expenditures to assist those programs.⁵³ Generally, religious organizations and parents must assume full responsibility for a student's attendance at religious activities. (See Question 15).

Religious administrators must, therefore, make arrangements for parents or escorts from particular religious groups to meet students at the public school and transport them to religious education activities.⁵⁴ In situations where school authorities permit high school students regularly to drive themselves to non-religious released time activities such as jobs, authorities also should allow students to drive or otherwise provide their own transportation to religious instruction classes.

QUESTION 15: How may attendance be recorded and enforced for released time classes?

The primary responsibility for enforcing attendance for released time classes lies with the parents and the religious

⁵³Zorach v. Clauson, 343 U.S. 306, 308-9, 314 (1952).

⁵⁴Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

administrators of a released time program. Allowing public school officials to punish truancy might amount to religious coercion violating the free exercise rights of students.⁵⁵

On the other hand, the public school may require attendance reports from released time administrators, since the school has a legitimate interest in knowing the whereabouts of its students during school hours.⁵⁶ Public schools also may choose not to require that attendance reports be filed.⁵⁷

Also, it is permissible for the public school to take some action against students who are enrolled in released time education but do not attend. Thus, the public school may report repeated absences to a child's parents, although it perhaps may not report only occasional absences.⁵⁸ Also, the public school may deny permission to attend released time classes to students who in the past requested the privilege but did not attend. This has been characterized as preventing students from abusing the privilege and deceiving the authorities, rather than punishing truancy.⁵⁹

⁵⁵Zorach v. Clauson, 343 U.S. 306, 314 (1952); Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678, 688 (Wis. 1975).

⁵⁶Zorach v. Clauson, 343 U.S. 306, 311, n.6; Lanner v. Wimmer, 662 F.2d 1349, 1358-59 (10th Cir. 1981); Holt v. Thompson, 66 W.2d 659, 225 N.W.2d 678, 682 (Wis. 1975).

⁵⁷Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

⁵⁸Lanner v. Wimmer, 662 F.2d 1349, 1355 (10th Cir. 1981).

⁵⁹Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678, 682 (Wis. 1975).

Once a public school decides to record attendance, it must choose the administrative procedure that requires it to be as uninvolved as possible in the attendance-taking procedure.⁶⁰ Religious administrators may be required to submit daily, weekly, or monthly attendance reports to the public school.⁶¹ In one program, a court allowed a public school to provide released time administrators with uniform attendance slips in order to integrate efficiently attendance data with the public school's records.⁶² Nevertheless, this practice treads dangerously close to an expenditure of public funds for the expenses of a released time program, which the Supreme Court has ruled is unconstitutional. Therefore, the burden of transmitting attendance reports from the released time program to the public school administration should remain on the released time administrators.⁶³

QUESTION 16: What activities should the public schools plan for students who are not released for religious instruction?

Students who do not participate in religious released time activities should continue with their secular school activities under the care and supervision of the school authorities. They cannot be required to leave their classroom.⁶⁴

⁶⁰ Lanner v. Wimmer, 662 F.2d 1349, 1358 (10th Cir. 1981).

⁶¹ Zorach, supra note 56, at 308 (weekly); Lanner, supra note 60, at 1355 (daily); Holt, supra note 59, at 682 (monthly).

⁶² Lanner v. Wimmer, 662 F.2d 1349, 1358 (10th Cir. 1981).

⁶³ Id.

⁶⁴ Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203 (1948) (released time program in which, among other characteristics, non-participating students had to leave their classrooms when sectarian instructors arrived to teach in the public classrooms is unconstitutional).

When planning activities for the remaining students, the school should keep two considerations in mind. On the one hand, the school has an obligation to plan constructive activities for the children who do not participate in a released time program. On the other hand, the school should be careful not to place students who participate in a released time program at a significant academic disadvantage. One possible solution would be for the school to suspend instruction in new material during released time, while continuing to provide formal supervision for activities which might include special projects, additional individual help, or perhaps a supervised study hall.⁶⁵

In situations where the amount of released time is significant or the number of students participating in the program is small, suspending instruction in new material might be impractical. If the school does decide to continue the presentation of new material, the school should give the religious students an opportunity to make up the lessons which they miss.

QUESTION 17: May a school district or state give credit for time spent in a released time program in order to meet the number of hours students are required to be in the custody of the school ("custodial credit")?

Yes. Only one court has specifically addressed the issue of whether time spent in a released time program may be credited toward the time which the state requires students to be in the

⁶⁵Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959)

school's custody and it held that such credit is permissible.⁶⁶ Since a school district or state generally cannot be compelled to adopt a released time program, it is doubtful that either could be compelled to give custodial credit for the time spent in a released time program. Finally, one other court, that did not address the issue directly, did note in passing that no school credit was given in that case for participation in a released time program, which it found to be essentially valid.⁶⁷

QUESTION 18: May a school district or state credit time spent in a released time program toward the number of hours that students must complete in order to meet graduation requirements? (i.e., may released time be an "elective credit"?)

Yes. The only court to have addressed this issue has held that released time classes may satisfy an elective credits requirement for graduation.⁶⁸ This court also ruled, however, that a state or school district must determine whether credit will be given for a particular released time course based on objective criteria, and not the religious content of the course.⁶⁹ That is, once a school district or state determines that it will give credit for released time coursework, it may not deny credit for a particular course based upon the religious content of that course. For example, credit could not be denied because a certain released time course was taught from a particular denominational viewpoint.

⁶⁶ Lanner v. Wimmer, 662 F.2d 1349, 1356, 1362 (10th Cir. 1981).

⁶⁷ Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

⁶⁸ Lanner v. Wimmer, 662 F.2d 1349, 1360-61 (10th Cir. 1981).

⁶⁹ Id.

It is unclear whether this means that school officials may allow credit for nonreligious released time classes but not for released time classes. Probably they would be allowed to distinguish between nonreligious and religious coursework by most courts.⁷⁰

In sum, the school district or state cannot be required to give elective credit for released time classes.

In one case, the court allowed grades from released time courses to be entered on a student's permanent record. However, the grade was not recorded on the student's public school report card.⁷¹

Finally, one court that did not address the issue, did note in passing that no school credit was given for participation in a released time program which it found to be essentially valid.⁷²

QUESTION 19: May a school district or state give credit for time spent in a released time program to meet the number of hours that students are required to be registered in order to be eligible for extracurricular activities or honor roll ("eligibility credit")?

Yes. Although only one court has addressed this issue, that court held that the hours spent in released time classes may be recognized for eligibility credit, if no test of religious content is employed.⁷³ That is, the school district or state may not condition credit upon the content of the particular class, but only upon objective secular criteria, such as teacher certification or

⁷⁰ Lanner, supra note 68, at 1360-61, could be read to prohibit such a distinction.

⁷¹ Id. at 1355.

⁷² Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

⁷³ Lanner v. Wimmer, 662 F.2d 1349, 1362 (10th Cir. 1981).

the appropriateness of the subject matter of the class. (See Question 18). Again it is unclear whether a school district or state can be compelled to give eligibility credit for released time classes. Finally, one court, that did not address the issue, did note in passing that no school credit was given for participation in a released time program which it found to be essentially valid.⁷⁴

QUESTION 20: If a school district decides to allow credit toward graduation for released time courses, how should registration be conducted?

Registration should be conducted in the least entangling manner possible. The student may indicate on a preregistration form or class schedule that he desires to attend a released time program, and he should plan his class schedule accordingly. Schedules for classes, school catalogues, and registration forms by the public school should not contain any schedules of released time classes. Registration for the released time course itself should occur off the school campus and involve only the released time administrators on forms supplied by the released time programs. The students may return the parental consent slips to the released time administrators, who would then forward them to the school. The school officials would thereby verify that a proper consent form exists for each student who preregistered for released time classes. That is the extent of their involvement.⁷⁵

⁷⁴Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

⁷⁵Lanner v. Wimmer, 662 F.2d 1349, 1354-55, 1359 (10th Cir. 1981).

QUESTION 21: May a school district or state count the time that students spend in a released time program in its formula for allocating state funding ("funding credit")?

Yes. A school district may count released time hours toward funding credit if the state allows it to do so.⁷⁶ Thus, the only federal court to have addressed this issue concluded that a state has discretion in determining the formula for its allocation of funding to school districts.

On the other hand, the state funding may not be used in any way to support or enhance released time classes. Also, a state has discretion to decide not to count time spent in a released time program in its funding formula. Thus, a particular school district cannot force a state to give funding credit for time spent in released time classes.⁷⁷

Finally, it is worth noting that one court, which did not directly address the funding credit issue, did note in passing that no school credit was given for participation in a released time program which it found to be essentially valid.⁷⁸

QUESTION 22: How much supervision may the public schools exercise over the content and teaching of a religious released time course?

Very little. Supervision of the content and teaching of a religious released time course is generally not allowed, since it might excessively entangle the state in religious matters.⁷⁹ On

⁷⁶Lanner v. Wimmer, 662 F.2d 1349, 1362-63 (10th Cir. 1981); Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678, 683 n.14 (Wis. 1975).

⁷⁷Lanner v. Wimmer, 662, F.2d 1349, 1362-63 (10th Cir. 1981).

⁷⁸Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

⁷⁹Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203, 208 (1948); Perry v. School District No. 81, 344 P.2d 1036, 1038 (Wash. 1959).

the other hand, if a school decides to give academic credit for religious instruction in a released time course, it may inquire into the training of teachers and whether a particular course covers a subject for which "credit" could be given.⁸⁰ But, when a released time program, even one that grants academic credit, is structured in such a way as to require state officials to monitor and judge what is religious and what is not religious in a private religious institution, then the entanglement inherent in such a determination exceeds permissible accommodation and offends the Establishment Clause.⁸¹

⁸⁰Lanner v. Wimmer, 662 F.2d 1349, 1361 (10th Cir. 1981).

⁸¹Id.

QUESTION 23: What constitutes legal and illegal religion studies in the public schools and how does one distinguish the difference between the propagation of a religious faith and the study of religion?

James V. Panoch has developed a set of what he calls "pair-words" which may be used to determine what constitutes legal and illegal religion studies in the public schools. The "pair-words" are as follows:

The school may sponsor the study of religion, but may not sponsor the practice of religion.

The school may expose students to all religious views, but may not impose any particular view.

The school's approach to religion is one of instruction, not one of indoctrination.

The function of the school is to educate about all, not to convert to any one, religion.

The school's approach to religion is academic, not devotional.

The school should study what all people believe, but should not teach a pupil what he should believe.

The school should strive for student awareness of all religions, but should not press for student acceptance of any one religion.

The school should seek to inform the student about various beliefs, but should not seek to conform him to any one belief.⁸²

QUESTION 24: How can one contrast the Champaign, Illinois plan in McCollum, which the Supreme Court held to be unconstitutional, with the New York City plan in Zorach, which the Court held to be constitutional?

The points of variance between McCollum and Zorach can be summarized as follows:

⁸²Peter Bracher et al, PERSC Guidebook, Public Education Religion-Studies: Questions and Answers (Dayton, Ohio: Public Education Religion Studies Center, 1974).

Champaign Plan

1. No underlying enabling State statute.
2. Religious training took place in the school buildings and on school property.
3. The place for instruction was designated by school officials.
4. Pupils taking religious instruction were segregated by school authorities according to religious faith of pupils.
5. School officials supervised and approved the religious teacher.
6. Pupils were solicited in school buildings for religious instruction.
7. Registration cards distributed by school. In at least one instance, the registration cards were printed at the expense of school funds.
8. Non-attending pupils isolated or removed to another room.

New York City Plan

1. Education Law, §3210 is the enabling statute which provides that "Absence from required attendance shall be permitted only for causes allowed by the general rules and practices of the public schools"; and further provides that "absence for religious observance and education shall be permitted under rules that the commissioner shall establish."
2. Religious training takes place outside of the school buildings and off school property.
3. The place for instruction is designated by the religious organization in cooperation with the parent.
4. No element of segregation is present.
5. No supervision or approval of religious teachers or course of instruction by school officials.
6. School officials do not solicit or recruit pupils for religious instruction.
7. No registration cards furnished by the school or distributed by the school. No expenditures of public funds involved.
8. Non-attending pupils stay in their regular classrooms continuing significant educational work.

Champaign Plan (cont.)

New York City Plan (cont.)

9. No credit given for attendance at the religious classes.
10. No compulsion by school authorities with respect to attendance or truancy.
11. No promotion or publicizing of the released time program by school officials.
12. No public monies are used.